

# **U.S. Department of Justice**

# United States Attorney District of Connecticut

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December 23, 2004

William F. Dow III, Esq. Jacobs, Grudberg, Belt & Dow 350 Orange Street New Haven, Connecticut 06503-0606

> Re: <u>United States v. John G. Rowland</u> Criminal No.

Dear Mr. Dow:

This letter confirms the plea agreement entered into between your client, John G. Rowland (the "defendant"), and the United States Attorney's Office for the District of Connecticut (the "Government") concerning the referenced criminal matter.

# THE PLEA AND OFFENSE

John G. Rowland agrees to waive his right to be indicted and to plead guilty to a one-count information charging him with Conspiracy to Commit Honest Services Mail Fraud and Tax Fraud, in violation of 18 U.S.C. § 371. He understands that to be guilty of this offense the following essential elements of the offense must be satisfied:

1. That John G. Rowland, together with Peter N. Ellef, William A. Tomasso, Tomasso Brothers, Inc. and Tunxis Management Co., Lawrence Alibozek, and others known and unknown to the United States Attorney's Office, entered into an unlawful agreement as charged in the Information, namely did knowingly, willfully and corruptly conspire to deprive the State of Connecticut and its citizens of honest services and knowingly defrauded the United States to impair and impede the lawful government functions of the Internal Revenue Service;

- 2. That John G. Rowland knowingly and willfully became a member of the conspiracy;
- 3. That one member of the conspiracy knowingly committed at least one of the overt acts charged in the Information; and
- 4. That the overt acts were committed to further some objective of the conspiracy.

### The Penalties

This offense carries a maximum penalty of five years of imprisonment and a \$250,000 fine. In addition, under 18 U.S.C. § 3583, the Court may impose a term of supervised release of not more than three years, to begin at the expiration of any term of imprisonment imposed. The defendant understands that should he violate any condition of the supervised release during its term, he may be required to serve a further term of imprisonment equal to two years, see 18 U. S. C. § 3583(b), with no credit for the time already spent on supervised release.

The defendant also is subject to the alternative fine provision of 18 U.S.C. § 3571. Under this section, the maximum fine that may be imposed on the defendant is the greatest of the following amounts: (1) twice the gross gain to the defendant resulting from the offense; (2) twice the gross loss resulting from the offense; (3) \$250,000; or (4) the amount specified in the section defining the offense.

In addition, the defendant is obligated by 18 U.S.C. § 3013 to pay a special assessment of \$100.00 on each count of conviction. The defendant agrees to pay the special assessment to the Clerk of the Court on the day the guilty plea is accepted.

Finally, unless otherwise ordered, should the Court impose a fine of more than \$2,500 as part of the sentence, interest will be charged on the unpaid balance of a fine amount not paid within 15 days after the judgment date. 18 U.S.C. § 3612(f). Other penalties and fines may be assessed on the unpaid balance of a fine pursuant to 18 U.S.C. §§ 3572(h), (i) and § 3612(g).

#### Restitution

In addition to the other penalties provided by law, the Court may also order that the defendant make restitution under 18 U.S.C. § 3663.

Waiver of Right to Challenge Absence of Jury Findings re Facts Used to Increase Sentence

The defendant understands that he may be able to argue under Appendi v. New Jersey, 530 U.S. 466 (2000), and Blakely v. Washington, 125 S. Ct. 2531 (2004), that he had the right to have a grand jury and a trial jury make certain findings of facts that could, in turn, determine whether the Court could: 1) apply any mandatory minimum sentence prescribed by statute; 2) impose a sentence within a range permitted by a higher statutory maximum sentence resulting

from a finding of such facts; and, 3) apply certain specific offense characteristics and other adjustments under the Sentencing Guidelines that may increase his Total Adjusted Offense Level and/or his Criminal History Category. The defendant further understands that he may be able to argue that any fact that increases the penalty for a crime beyond a prescribed level must be approved by a grand jury and submitted to a trial jury and proved beyond a reasonable doubt. The defendant knowingly and voluntarily waives his right to have or have had those facts set forth in the attached Stipulation, which are relevant to the enhancement of his sentence, submitted for findings by a grand jury or trial jury. Defendant expressly understands and agrees that such facts will be determined by stipulation between the parties; in accordance with the procedures specified by the United States Guidelines; or by the Court upon a finding that the relevant facts have been established by reliable evidence, which may include hearsay evidence, and proven by a preponderance of the evidence. Other than the facts set forth in the attached Stipulation, the defendant does not waive his right to have any other facts established beyond a reasonable doubt for the purposes of a sentence pursuant to the Federal Sentencing Guidelines or any applicable decisions of the United States Supreme Court affecting application of the guidelines.

The defendant and the Government agree to the following, in the event the Supreme Court decides the cases of <u>United States v. Booker</u>, No. 04-104 and <u>United States v. Fanfan</u>, No. 04-105 between the date of this plea and the defendant's sentencing: If the Supreme Court rules that the U.S. Sentencing Guidelines are unconstitutional and that a district court is therefore obliged to impose a sentence within the minimum and maximum penalty ranges set forth by statute, but is not bound by the Guidelines, then the defendant may argue for a sentence under the sentencing standard which the Supreme Court rules is applicable. In such circumstances, the Government will abide by the terms of this agreement and continue to recommend that the Court impose a sentence within the Guideline range as described below.

## THE SENTENCING GUIDELINES

## 1. <u>Applicability</u>

The defendant understands that absent any decision by the United States Supreme Court in the <u>Booker</u> and <u>Fanfan</u> cases referred to above, the Sentencing Reform Act of 1984 and the Sentencing Guidelines apply in this case. The defendant understands that the Court is required to consider any applicable Sentencing Guidelines but may depart from those Guidelines under some circumstances. The defendant expressly understands that the Sentencing Guideline determinations will be made by the Court, based upon input from the defendant, the Government, and the United States Probation Officer who prepares the presentence investigation report. The defendant further understands that he has no right to withdraw his guilty plea if his sentence or the Guideline application is other than he anticipated.

## 2. Acceptance of Responsibility

At this time, the Government agrees to recommend that the Court reduce by three levels the defendant's Adjusted Offense Level under section § 3E1.1 of the Sentencing Guidelines,

based on the defendant's prompt recognition and affirmative acceptance of personal responsibility for the offense. This recommendation is conditioned upon the defendant's full, complete, and truthful disclosure to the Probation Office of information requested, of the circumstances surrounding his commission of the offense, of his criminal history, and of his financial condition. In addition, this recommendation is conditioned upon the defendant timely providing complete information to the Government concerning his involvement in the offense to which he is pleading guilty. The defendant expressly understands that the Court is not obligated to accept the Government's recommendation on the reduction.

The Government will not make this recommendation if the defendant engages in any acts which (1) indicate that the defendant has not terminated or withdrawn from criminal conduct or associations (Sentencing Guideline section § 3E1.1); (2) could provide a basis for an adjustment for obstructing or impeding the administration of justice (Sentencing Guideline §3C1.1); or (3) constitute a violation of any condition of release. The defendant expressly understands that he may not withdraw his plea of guilty if, for the reasons explained above, the Government does not make this recommendation.

# 3. <u>Stipulation</u>

Pursuant to § 6B1.4 of the Sentencing Guidelines, the defendant and the Government have entered into a stipulation which is attached to and made a part of this plea agreement. The defendant understands that this stipulation does not purport to set forth all of the relevant conduct and characteristics that may be considered by the Court for purposes of sentencing. The defendant expressly understands that this stipulation is not binding on the Court. The defendant also understands that the Government and the United States Probation Office are obligated to advise the Court of any additional relevant facts that subsequently come to their attention.

# 4. <u>Guideline Stipulation</u>

The information in this case charges a conspiracy to violate 18 U.S.C. Sections 1341 and 1346 alleging a deprivation of the intangible right of honest services in that the defendant accepted gratuities and concealed those gratuities for, because of and in connection with the performance of his official duties as the Governor of the State of Connecticut. Therefore, the cross-reference of § 2C1.7(c)(4) requires application of § 2C1.2(a).

The base offense level is 7 under 2C1.2(a); 2 levels are added for more than one gratuity under 2C1.2(b)(1); 8 levels are added under either 2C1.2(b)(2)(A) or 2C1.2(b)(2)(B); and three levels are subtracted under 2C1.2(b)(2)(A) for acceptance of responsibility. This results in an adjusted offense level of 14.

The defendant pay a personal fine within the applicable guidelines range (\$4,000-\$40,000), the exact amount to be determined by the Court at sentencing;

The Government will recommend that the Court impose a sentence within the range of 15-21 months. The defendant reserves the right to argue for an adjustment under § 3B1.2(b)

(Minor Role) and for a downward departure under § 5K2.0 based on a combination of the following factors: unique financial circumstances and professional and individual community contributions. If the Court does not make a minor role adjustment, the defendant may also argue that a § 5K2.0 departure is warranted because the defendant was not the prime motivator or initiator of the conspiracy charged.

The Government will continue to recommend a sentence within the range of 15-21 months. The Government acknowledges that the Second Circuit has recognized that in the extraordinary cases, the district court may downwardly depart under § 5K2.0 when a number of factors, that when considered individually would not permit a downward departure, combine to create a situation that differs significantly from the heartland of cases covered by the guidelines. The Government further recognizes that the decision whether to impose said downward departure under § 5K2.0 is within the discretion of the Court and the Government will, therefore, leave the decision to the discretion of the Court. The Government does, however, maintain its right to provide the Court with all information which concerns the defendant's request for a downward departure under § 5K2.0.

Under this agreement, the defendant remains free to seek additional downward departures from the Court, but he understands that the United States reserves all rights to oppose any such additional departures.

The defendant expressly understands that the Court is not bound by this agreement on the Guideline range specified above. The defendant further expressly understands that he will not be permitted to withdraw the plea of guilty if the Court imposes a sentence outside the Guideline range set forth in this agreement.

In the event the Probation Office or the Court contemplates any sentencing calculations different from those stipulated by the parties, the parties reserve the right to respond to any inquiries and make appropriate legal arguments regarding the proposed alternate calculations. Moreover, the Government expressly reserves the right to challenge or defend any sentencing determination, other than that stipulated by the parties, in any post-sentencing proceeding.

### 5. Appeal Rights Regarding Sentencing

The parties reserve their respective rights to appeal and to oppose each other's appeal of the sentence imposed as permitted by the statute.

### 6. <u>Information to the Court</u>

The Government expressly reserves its right to address the Court with respect to an appropriate sentence to be imposed in this case. Moreover, it is expressly understood that the Government will discuss the facts of this case, including information regarding the defendant's background and character, 18 U.S.C. § 3661, with the United States Probation Office and will provide the Probation Officer with access to its file, with the exception of grand jury material.

### WAIVER OF RIGHTS

# Waiver of Right to Indictment

The defendant understands that he has the right to have the facts of this case presented to a federal grand jury, consisting of between sixteen and twenty-three citizens, twelve of whom would have to find probable cause to believe that he committed the offense set forth in the information before an indictment could be returned. The defendant expressly acknowledges that he is knowingly and intelligently waiving his right to be indicted.

# Waiver of Trial Rights and Consequences of Plea

The defendant understands that he has the right to be represented by an attorney at every stage of the proceeding and, if necessary, one will be appointed to represent him.

The defendant understands that he has the right to plead not guilty or to persist in that plea if it has already been made, the right to a public trial, the right to be tried by a jury with the assistance of counsel, the right to confront and cross-examine the witnesses against him, the right not to be compelled to incriminate himself, and the right to compulsory process for the attendance of witnesses to testify in his defense. The defendant understands that by pleading guilty he waives and gives up those rights and that, if the plea of guilty is accepted by the Court, there will not be a further trial of any kind.

The defendant understands that if he pleads guilty, the Court may ask him questions about each offense to which he pleads guilty, and if he answers those questions falsely under oath, on the record, and in the presence of counsel, his answers may later be used against him in a prosecution for perjury or making false statements.

### Waiver of Statute of Limitations

The defendant understands and agrees that should the conviction following defendant's plea of guilty pursuant to this plea agreement be vacated for any reason, then any prosecution that is not time-barred by the applicable statute of limitations on the date of the signing of this plea agreement may be commenced or reinstated against defendant, notwithstanding the expiration of the statute of limitations between the signing of this plea agreement and the commencement or reinstatement of such prosecution. The defendant agrees to waive all defenses based on the statute of limitations with respect to any prosecution that is not time-barred on the date the plea agreement is signed.

## **ACKNOWLEDGEMENT OF GUILT; VOLUNTARINESS OF PLEA**

The defendant acknowledges that he is entering into this agreement and is pleading guilty freely and voluntarily because he is guilty. The defendant further acknowledges that he is entering into this agreement without reliance upon any discussions between the Government and him (other than those described in the plea agreement letter), without promise of benefit of any

kind (other than the concessions contained in the plea agreement letter), and without threats, force, intimidation, or coercion of any kind. The defendant further acknowledges his understanding of the nature of the offense to which he is pleading guilty, including the penalties provided by law. The defendant also acknowledges his complete satisfaction with the representation and advice received from his undersigned attorney. The defendant and his undersigned counsel are unaware of any conflict of interest concerning counsel's representation of the defendant in the case.

The defendant expressly acknowledges that he is not a "prevailing party" within the meaning of Public Law 105-119, section 617 ("the Hyde Amendment") with respect to the count of conviction or any other count or charge that may be dismissed pursuant to this agreement. The defendant voluntarily, knowingly, and intelligently waives any rights he may have to seek reasonable attorney's fees and other litigation expenses under the Hyde Amendment.

#### SCOPE OF THE AGREEMENT

The defendant acknowledges and understands that this agreement is limited to the undersigned parties and cannot bind any other federal authority, or any state or local authority. The defendant acknowledges that no representations have been made to him with respect to any civil or administrative consequences that may result from this plea of guilty because such matters are solely within the province and discretion of the specific administrative or governmental entity involved. Finally, the defendant understands and acknowledges that this agreement has been

reached without regard to any civil tax matters that may be pending or which may arise involving him.

#### **COLLATERAL CONSEQUENCES**

The defendant further understands that he will be adjudicated guilty of each offense to which he has pleaded guilty and will be deprived of certain rights, such as the right to vote, to hold public office, to serve on a jury, or to possess firearms. The defendant understands that the Government reserves the right to notify any state or federal agency by which he is licensed, or with which he does business, as well as any current or future employer of the fact of his conviction.

### SATISFACTION OF FEDERAL CRIMINAL LIABILITY; BREACH

The defendant's guilty plea, if accepted by the Court, will satisfy the federal criminal liability of the defendant in the District of Connecticut as a result of his participation in a conspiracy both (1) to devise and participate in a scheme to defraud the State of Connecticut and its citizens the honest services of its Governor, and public officials Peter N. Ellef, Lawrence Alibozek and others between approximately October 1997 and October 2003 and (2) to defraud the Internal Revenue Service in the computation, ascertainment, computation, assessment and collection of income taxes for the tax years 1998 through 2001, which forms the basis of the information in this case.

The defendant understands that if, before sentencing, he violates any term or condition of this agreement, engages in any criminal activity, or fails to appear for sentencing, the Government may void all or part of this agreement. If the agreement is voided in whole or in part, defendant will not be permitted to withdraw his plea of guilty.

### **NO OTHER PROMISES**

The defendant acknowledges that no other promises, agreements, or conditions have been entered into other than those set forth in this plea agreement, and none will be entered into unless set forth in writing, signed by all the parties.

This letter shall be presented to the Court, in open court, and filed in this case.

Very truly yours,

JOHN H. DURHAM ACTING UNITED STATES ATTORNEY

NORA R. DANNEHY ASSISTANT UNITED STATES ATTORNEY

The defendant certifies that he has read this plea agreement letter and its attachment(s), that he has had ample time to discuss this agreement and its attachment(s) with counsel and that he fully understands and accepts its terms.

John G. Rowland The Defendant	Date	
I have thoroughly read, review to my client who advises me that he u	ved and explained this plea agreement and its a understands and accepts its terms.	ttachment(s)
William F. Dow, Esq. Attorney for the Defendant	Date	

#### STIPULATION OF OFFENSE CONDUCT

The defendant John G. Rowland and the Government stipulate and agree to the following offense conduct that gives rise to the defendant's agreement to plead guilty to the information:

- 1. John G. Rowland was the Governor of the State of Connecticut from approximately January 1995 through June 2004.
- 2. As Governor of the State of Connecticut, John G. Rowland was an elected official who held a high-level decision-making and sensitive position.
- 3. From approximately October 1997 and continuing through approximately October 2003, in the District of Connecticut and elsewhere, defendant JOHN G. ROWLAND, together with Peter N. Ellef; William A. Tomasso, Tomasso Brothers, Inc. and Tunxis Management Co. (hereinafter collectively referred to as "Tomasso and related entities"); Lawrence Alibozek and other persons, known and unknown to the United States Attorney's Office, did unlawfully and knowingly combine, conspire, confederate and agree with each other to commit certain offenses against the United States as follows:
- (a) devise and participate in a scheme and artifice to deprive the State of Connecticut and its citizens of the intangible right to the honest services of its Governor, the defendant JOHN G. ROWLAND, and of public officials Peter N. Ellef, Lawrence Alibozek and others, and to have those services performed free from deceit, favoritism, bias, conflict of interest and self enrichment, in violation of 18 U.S.C. § 1341, 1346;
- (b) willfully and knowingly defraud the United States for the purpose of impeding, impairing, obstructing and defeating the lawful Government functions of the Internal Revenue Service of the Treasury Department in the ascertainment, computation, assessment and collection of the revenue, that is, income taxes, in violation of 18 U.S.C. § 371.
- 4. Between approximately January 1998 and December 2001, defendant John G. Rowland accepted things of value or gratuities for, because of and in connection with the business of the State of Connecticut. As described below, defendant John G. Rowland received more than one gratuity for because of and in connection with the business of the State of Connecticut:
  - (a) Between in or about February 1998 and February 2002, defendant JOHN G. ROWLAND vacationed alone with his family at no charge approximately three times at the Vermont home of Tomasso and related entities.
  - (b) In approximately May 1998, Tomasso and related entities performed construction work at no charge at the Bantam Lake cottage of defendant JOHN G. ROWLAND.
  - (c) On approximately November 22, 1998, defendant JOHN G. ROWLAND learned that Peter N. Ellef, Lawrence Alibozek and other state officials traveled to Ohio with Tomasso and related entities to view models for the Connecticut Juvenile Training School ("CJTS"). Despite having learned that Tomasso and related entities had inappropriately received confidential and inside information about the CJTS project,

defendant JOHN G. ROWLAND took no corrective action.

- (d) On approximately December 15, 1998, defendant JOHN G. ROWLAND received a memorandum outlining that Tomasso and related entities were performing renovation work at Long Lane School ("LLS") in Middletown, Connecticut. In approximately January 1999, defendant JOHN G. ROWLAND gave his consent as Governor of Connecticut for DPW to enter, without competitive bidding, into a contract in excess of \$250,000 with Tunxis Management Co. to renovate LLS, under which contract DPW paid Tunxis Management Co. approximately \$2.1 million.
- (e) In approximately March 1999, defendant JOHN G. ROWLAND and with his wife vacationed alone at the Florida home of Tomasso and related entities and knowingly paid only a nominal amount for the seven-day stay.
- (f) In approximately May 1999, Peter N. Ellef and Lawrence Alibozek, together with Tomasso and related entities, arranged and paid for the installation of a heating system at the Bantam Lake cottage.
- (g) In approximately February 2000, defendant JOHN G. ROWLAND directed the commissioner of DOT to sign a lease agreement concerning the construction and operation of the Bradley Airport parking garage, which agreement was to benefit Tomasso and related entities.
- (h) Between approximately January 1998 and December 2000, defendant JOHN G. ROWLAND approved bond agendas for, voted affirmatively as a member of the bond commission for, and subsequently allocated monies to projects which benefitted the financial interests of Tomasso and related entities.
- (i) Between approximately April 1999 and November 2000, defendant JOHN G. ROWLAND took personal trips to Las Vegas and Philadelphia at no charge on private chartered planes provided by Entity A.
- (j) Between approximately August 2001 and February 2002, a representative of Entity A met with and requested that defendant JOHN G. ROWLAND advocate a change in the State of Connecticut's tax legislation which benefitted Entity A.
- (k) In approximately October 2001, Peter N. Ellef directed DRS to include a tax exemption which benefitted Entity A in DRS's 2002 legislative proposals.
- (1) In approximately January 2002, defendant JOHN G. ROWLAND approved as part of the Governor's Budget a retroactive tax exemption which benefitted only Entity A.

5. The above things of value total \$107,042.69, which consists of \$15,549.00 from Tomasso and related entities and \$91,493.69 from Entity A, all of which represents unreported income for the tax years 1998, 1999, 2000 and 2001. As a result, defendant JOHN G. ROWLAND has a tax plus interest due and owing of \$35,459.25.

The written stipulation above is incorporated into the preceding plea agreement. It is understood, however, that the defendant and the Government reserve their right to present additional relevant offense conduct to the attention of the Court in connection with sentencing.

John C. Dovidand Nava D. Dovinsky

John G. Rowland Nora R. Dannehy
The Defendant Assistant United States Attorney

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William F. Dow III, Esq. Attorney for the Defendant